

Exhibit 4

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF PINAL

12 THE PARSONS CO., INC.,
13 Plaintiff,
14 vs.
15 AWD RANCH LLC, an Arizona limited
16 liability company; R. W. WALKER and
17 EVE F. WALKER, husband and wife;
18 DESERT PLANTS CONSERVANCY,
19 L.L.C., an Arizona limited liability company,
20 Defendants.

Case No: CVC 2004-01368
WALKER DEFENDANTS'
SECOND AMENDED CROSS-CLAIM
AND THIRD-PARTY COMPLAINT
(Assigned to the Hon. Robert Carter Olson)

ETC.

For their First Amended Cross-Claim and Third-Party Complaint, Defendants/Cross-Claimants/Third-Party Plaintiffs R. W. Walker and Eve F. Walker allege as follows:

GENERAL ALLEGATIONS

1. Defendants/Cross-Defendants/Cross-Claimants/Third-Party Plaintiffs R. W. WALKER and EVE F. WALKER ("the Walkers"), husband and wife, reside in the State of Colorado.
2. At all times material hereto, the Walkers were married and were acting on behalf of their marital community.

1 3. Defendant AWD RANCH, LLC ("AWD"), is a limited liability company organized
2 under the laws of the State of Arizona and authorized to do and doing business in Pinal County,
3 Arizona.

4 4. Defendant DESERT PLANTS CONSERVANCY, LLC ("DPC"), is a limited liability
5 company organized and existing under the laws of the State of Arizona and authorized to do and doing
6 business in Pinal County, Arizona.

7 5. Third-Party Defendant MIMI PIERRON ("Pierron") has caused an act or event to occur
8 in Pinal County, Arizona, and is subject to the jurisdiction of this Court.

9 6. Third-Party Defendant NILES LIPIN ("Lipin") has caused an act or event to occur in
10 Pinal County, Arizona, and is subject to the jurisdiction of this Court.

11 7. Third-Party Defendants LORRAINE KESSELRING and JOHN DOE KESSELRING,
12 husband and wife, have caused an act or event to occur in Pinal County, Arizona, are thus subject to
13 the jurisdiction of this Court, and were, at all relevant times, acting for and on behalf of their marital
14 community.

15 8. Third Party Defendant THE UNITED STATES OF AMERICA has caused an event to
16 occur in Pinal County, Arizona, and is subject to the jurisdiction of this Court.

17 9. Those Defendants named as JOHN DOES 1 through 10, JANE DOES 1 through 10, A,
18 B, C CORPORATIONS 1 through 10 and X, Y, Z ENTITIES 1 through 10, are fictitious Defendants
19 whose interest may appear subsequent to the date of this Complaint and prior to the recordation of a
20 Lis Pendens or entry of a judgment. As soon as the true identities of these Defendants are known, the
21 Walkers will move for their joinder.

22 10. The real property which is the subject of these judicial foreclosures is located in Pinal
23 County, Arizona.

24 . . .
25 . . .
26 . . .

COUNT ONE

(Foreclosure of Deed of Trust No. 2002-051893)

11. The Walkers reallege each and every allegation set forth in the preceding paragraphs, and incorporate them herein by reference, as though the same were set forth in full herein.

12. On or about August 21, 2002, DPC, by and through Pierron, both as its managing member and in her individual capacity, executed a Promissory Note, Escrow Number 231-4020039 (LRM) in favor of the Walkers, in the principal sum of One Hundred Ninety-Five Thousand and 00/100 Dollars (\$195,000.00). A true and correct copy of this Promissory Note is attached hereto as Exhibit A and incorporated herein by reference.¹

13. The Promissory Note provided that semi-annual installments of Seven Thousand Eight Hundred Seventeen and 28/100 Dollars (\$7,817.28) would be paid on or before the 25th day of both March and September, beginning on March 25, 2003, and continuing until the principal balance has been paid in full. Interest on the unpaid principal balance was to accrue at seven percent (7%) per annum from September 25, 2002 until paid in full.

14. The Note further provided that the entire principal balance was to be paid on or before September 25, 2009.

15. The Note further provided that, if any payment was at least fifteen (15) calendar days past due, a late charge in the amount of One Hundred and 00/100 Dollars (\$100.00) would become due.

16. The Note further provided that, if any payment was late, the late fee would be One Hundred Twenty-Seven and 00/100 Dollars (\$127.00) per day.

17. In addition to the late fees set forth above, the Note further provided that if the payment(s) is at least thirty (30) days past due, then the principal balance shall bear interest at the default rate of five percent (5%) per annum above the stated interest rate of seven percent (7%) per annum.

¹This Exhibit A and each of the other Exhibits B through L discussed below are attached to the Walkers' First Amended Cross-Claim and Third-Party Complaint dated August 22, 2008, and those Exhibits are incorporated herein by this reference, but are not attached to this pleading.

1 G. For interest on the aggregate at the statutory rate of ten percent (10%) per annum until
2 paid; and

3 H. For such other and further relief as is just and proper under the circumstances.
4

5 **COUNT FIVE**

6 **(Fraud)**

7 103. The Walkers hereby reallege each and every allegation set forth in the preceding
8 paragraphs as though the same were set forth in full herein.

9 104. Count Five herein is being asserted against each of the Cross-Defendants and Third-
10 Party Defendants identified in Paragraphs 3 through 7 above (hereinafter the "AWD Parties.")

11 105. During the negotiations in 2002 between the Walkers and the AWD Parties that led to
12 the sales and loan transactions that are the subject of Counts One through Four above, The AWD
13 Parties represented to the Walkers that said parties had sufficient income, assets and credit that would
14 be sufficient for them to meet their obligations under the various instruments and loan agreements that
15 said parties signed that are alleged in the above paragraphs of this pleading and are attached as exhibits
16 to the Walkers previous pleadings in this matter (hereinafter, the "Sales and Loan Documents").

17 106. Said representations were false and misleading, and were intentionally false and
18 misleading, and were made by the AWD Parties to the Walkers to fraudulently induce the Walkers to
19 agree to sell the properties to the AWD Parties and to issue the loans to the AWD Parties as reflected
20 in the Sales and Loan Documents.

21 107. Upon information and belief, at a point in time that is unknown to the Walkers, the
22 AWD Parties concocted a plan to defraud the Walkers by improperly and illegally misrepresenting
23 themselves as having the requisite income, assets and credit that would be sufficient for them to meet
24 their obligations under the Sales and Loan Documents.

25 108. Among other fraudulent statements and purposeful misrepresentations, the AWD Parties
26 prepared and presented to the Walkers certain financial statements that falsely represented that the

1 AWD Parties and certain of them had more income and assets than was actually true and correct.

2 109. As part of the fraudulent plan and scheme, the AWD Parties also secretly, that is without
3 any notice to or discussion with the Walkers, and in direct violation of the terms of the Sales and Loan
4 Documents then being negotiated and signed in and around 2002, created an entity, AWD Farms, for
5 the benefit of which entity the AWD Parties purported to illegally and improperly subordinate and
6 encumber their assets and income as well as the properties in question in this lawsuit.

7 110. Upon information and belief, that entity AWD Farms may not even have been created
8 until very recently when the AWD Parties sought to carry on their fraudulent plan and scheme even
9 further by falsely creating it in the AWD Parties' efforts to evade their responsibilities and debts and
10 to improperly hide income and assets from the Walkers and others including the Internal Revenue
11 Service and to make false and misleading claims in this lawsuit about their alleged damages.

12 111. The Walkers believe and therefore allege that the AWD Parties pursued the above-
13 described plan and scheme in order to defraud the Walkers so that the AWD Parties would acquire the
14 above-described properties to use and make profits for their own accounts and, in the process, deprive
15 the Walkers of whatever profits and future sales proceeds that the Walkers would have been able to
16 achieve if they retained the properties in question and/or sold the properties to properly and sufficiently
17 financed persons or entities. In addition, the plan and scheme aided the AWD Parties in submitting
18 false and misleading damage claims in this lawsuit.

19 112. The Walkers believe and therefore allege that the AWD Parties pursued the above-
20 described plan and scheme with full knowledge that said plan and scheme would result in the Walkers
21 being deprived of their rightful assets and potential profits and sales proceeds to be derived therefrom
22 and that carrying on the plan and scheme would cause the Walkers to expend large amounts of money
23 in seeking to recover possession of the properties in question and to defend themselves against
24 improper claims made against the Walkers by the AWD Parties.

25 113. The Walkers believe and therefore allege that the AWD Parties, in concocting and
26 pursuing the above-described plan and scheme, knew that their actions in preparing and submitting

1 such financial statements and records to the Walkers were false, wrong and fraudulent, or that they
2 performed such actions with a reckless disregard for the truth or falsity thereof, and the AWD Parties
3 concealed or failed to disclose material facts in the documents that comprised the financial records and
4 the oral statements made to the Walkers about the AWD Parties financial condition.

5 114. The representations by the AWD Parties as described above were false, were intended
6 by the AWD Parties to be false and misleading, were material to said sales and loan transactions, and
7 were made by the AWD Parties with the intent that others, including the Walkers, would rely on them.
8 The Walkers did rely on them and had a right to rely on them, all to the Walkers' detriment and
9 damage.

10 115. The Walkers believe and therefore allege that the AWD Parties knew when they made
11 the false and fraudulent representations as alleged above that the Walkers and others would rely on
12 them and that the Walkers and others would be injured if the AWD Parties actually went ahead and
13 purchased the properties in question and if the Walkers went ahead and made the loans to the AWD
14 Parties that are reflected in the Sales and Loan Documents.

15 116. As noted above in this pleading, the Walkers have suffered and/or will suffer significant
16 damages from the AWD Parties' fraud in that the Walkers' followed through and sold the properties
17 to the AWD Parties and signed the loan documents shown in the Sales and Loan Documents and
18 thereafter the AWD Parties defaulted on those loans and the Walkers have been required to resort to
19 seeking redress in this Court for the wrongs perpetrated by the AWD Parties.

20 117. The acts of the AWD Parties were part of an evil plan and scheme which was of such
21 a grave, intentional and malicious nature amounting to gross misconduct and a total disregard for the
22 rights of the Walkers and others, that an award of punitive damages to the Walkers is fully warranted
23 and justified. The amount of the punitive damages should be an amount appropriate to punish the
24 AWD Parties and to deter them and others from engaging in similar conduct in the future.

25 **WHEREFORE**, the Walkers ask for Judgment against the AWD Parties as follows:

26 A. For a Judgment in favor of the Walkers and against the AWD Parties for a sum to fully

1 compensate the Walkers, not only for the amount of the defaulted loans, the missed payments, the lost
2 interest and fees, but also for all damages that the Walkers have suffered because of the fact that the
3 Walkers have not been able to reap profits and/or sales proceeds from the properties in question since
4 2002 and because of the fact that the Walkers have expended great amounts of money in expenses and
5 legal fees in seeking redress against the AWD Parties and in the Walkers defending themselves against
6 the spurious claims filed by the AWD Parties in this lawsuit;

7 B. For Judgment in favor of the Walkers and against the AWD Parties, on the Walkers'
8 claims for punitive damages, in a sum sufficient to adequately punish the AWD Parties and sufficient
9 to deter them and others from engaging in similar conduct in the future.

10 C. For the court costs incurred herein by the Walkers;

11 D. For the attorney's fees incurred herein by the Walkers, under any and all applicable
12 statutes and common law principles;

13 E. For interest on the amount of any Judgment rendered under this Count at the statutory
14 rate until paid; and

15 F. For such other and further relief as is just and proper under the circumstances.

16 17 COUNT SIX

18 (Negligent Misrepresentation)

19 118. The Walkers hereby reallege each and every allegation set forth in the preceding
20 paragraphs as though the same were set forth in full herein.

21 119. Count Six herein is being asserted against each of the Cross-Defendants and Third-Party
22 Defendants identified in Paragraphs 3 through 7 above (hereinafter the "AWD Parties.")

23 120. The AWD Parties made certain misrepresentations in connection with their negotiations
24 with the Walkers regarding the purchase by the AWD Parties of the properties in question and the
25 loans made by the Walkers to the AWD Parties as more fully described above in this pleading.

26 121. At some point between 2002 and 2008, the AWD Parties also created an entity AWD

1 Farms as discussed above as part of the false and fraudulent plan and scheme

2 122. The Walkers believe and therefore allege that the AWD Parties' representations made
3 in connection with above-described negotiations and transactions were false, the AWD Parties knew
4 that they were false or made said representations with a reckless disregard for the truth or falsity
5 thereof, and the AWD Parties concealed or failed to disclose material facts in the documents prepared
6 and submitted to the Walkers in connection with the above-discussed negotiations and transactions.

7 123. The above-stated acts of the AWD Parties, at the very least, constitute negligent
8 misrepresentation.

9 124. As noted above in this pleading, the Walkers have suffered and/or will suffer significant
10 damages from the AWD Parties' fraudulent and/or negligent misrepresentation in that the Walkers'
11 followed through and sold the properties to the AWD Parties and signed the loan documents shown
12 in the Sales and Loan Documents and thereafter the AWD Parties defaulted on those loans and the
13 Walkers have been required to resort to seeking redress in this Court for the wrongs perpetrated by the
14 AWD Parties.

15 125. The acts of the AWD Parties were part of an evil plan and scheme which was of such
16 a grave, intentional and malicious nature amounting to gross misconduct and a total disregard for the
17 rights of the Walkers and others, that an award of punitive damages to the Walkers is fully warranted
18 and justified. The amount of the punitive damages should be an amount appropriate to punish the
19 AWD Parties and to deter them and others from engaging in similar conduct in the future.

20 **WHEREFORE**, the Walkers ask for Judgment against the AWD Parties as follows:

21 A. For a Judgment in favor of the Walkers and against the AWD Parties for a sum to fully
22 compensate the Walkers, not only for the amount of the defaulted loans, the missed payments, the lost
23 interest and fees, but also for all damages that the Walkers have suffered because of the fact that the
24 Walkers have not been able to reap profits and/or sales proceeds from the properties in question since
25 2002 and because of the fact that the Walkers have expended great amounts of money in expenses and
26 legal fees in seeking redress against the AWD Parties and in the Walkers defending themselves against

1 the spurious claims filed by the AWD Parties in this lawsuit.

2 B. For Judgment in favor of the Walkers and against the AWD Parties, on the Walkers'
3 claims for punitive damages, in a sum sufficient to adequately punish the AWD Parties and to
4 sufficient to deter them and others from engaging in similar conduct in the future.

5 C. For the court costs incurred herein by the Walkers;

6 D. For the attorney's fees incurred herein by the Walkers, under any and all applicable
7 statutes and common law principles;

8 E. For interest on the amount of any Judgment rendered under this Count at the statutory
9 rate until paid; and

10 F. For such other and further relief as is just and proper under the circumstances.

11
12 DATED this 31st day of October, 2008.

13
14 CARSON MESSINGER ELLIOTT
15 LAUGHLIN & RAGAN, P.L.L.C.

16
17 By 

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23 Attorneys for the Walker Defendants

24 COPY of the Foregoing mailed
25 and Faxed this 31st day
26 of October, 2008, to:

Hon. Robert Carter Olson
Judge of the Superior Court
P. O. Box 946
Florence, Arizona 85232
Fax No. (520) 866-5414